

1 Cardiac output is increased (cardiovascular disease)

2 Better blood pressure (cardiovascular disease)

3 Less brain fog (Alzheimers)

4 Lessens stress on joints (rheumatoid arthritis)

5 Inflammation reduced (rheumatoid arthritis)

6 Loosens the Primary System that Causes Pain (fibromyalgia)”

7 (i) From the Dallas area, alone, FDA had received “approximately
8 06 complaints ... alleging injury due to the medical device or
9 requesting assistance due to disease claims made by the inventor,
10 Ashley Black.”

11 (j) Defendant’s agent or employee—identity redacted from the
12 report—who “inputs the required FDA medical device description in
13 the U.S. Customs database” when the device’s manufacturer(s) ships it
14 to the U.S. “was recently given direction by [redacted] to change the
15 product code for the FasciaBlaster from a finished device 89LYG
16 (manual therapeutic massager) to a medical device component, 89IOD
17 (Exercise component) . . . [a]t least 05 detentions were initiated by
18 FDA imports due to not having matching product code between the
19 exporting manufacturer (shipping) and the Initial Importer (receiving).”

20 (k) “I requested to see the raw data in support of the clinical study
21 documented online []. The firm [Defendant ADBI] had no raw data
22 available for regulatory review. ”

23 90. The intrepid FDA Investigator comes across as surprised to find herself
24 in the position of having to be the one to educate Defendants’ representatives
25 regarding their basic responsibilities and duties owed to customers and society at
26 large. Her detailed depictions of some of Defendants’ confused and unprepared
27 employees, desperately claiming ignorance, earnestly turning over empty report
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1 files, etc. might even be humorous, had so many customers not been so badly
2 injured by their irresponsibility and incompetence. The Investigator seems almost
3 incredulous about being thrust into the role of chastising federal schoolmarm:

4 Specifically, your firm, ADB Interests LLC, has no MDR procedure or
5 internal system in place[] to provide for the timely and effective
6 identification, communication and evaluation of events that may be
7 subject to medical device reporting requirements. ¶ ADB Interests LLC
8 is registered with the FDA as a Specification Developer of Class I
9 finished medical devices: manual, therapeutic massagers. Your firm
10 also acts as the Initial Importer. *As such, you are responsible for*
11 *maintaining, evaluating and investigating, when necessary, all*
12 *complaints that may allege serious injury or malfunction by your*
13 *medical device, FasciaBlaster.*

14 (Emphasis added.) In sum, from the date of its entry into commerce until July 18,
15 2017, if not more recently or indeed currently, Defendant ADBI was grossly
16 noncompliant with FDA regulations, and at best oblivious, if not willfully
17 dismissive, of its obligation to society to refrain from selling a dangerous product.

18 Defamation and Cyber-Bullying

19 91. On information and belief, for Defendants' marketing purposes they
20 did and do rely most heavily on social media forums, e.g. discussion groups and
21 Defendant Black's and other company profile pages' comments sections on
22 Facebook. In these forums Defendants did and do e.g. tout FasciaBlaster's putative
23 beauty and health benefits, encourage purchases of different device models and
24 accessories, and cheerlead, motivate, and aggressively endeavor to foster a feeling
25 of community among 'blasters,' e.g. referring to their number as "Blaster Sisters".

26 92. One consequence of the foregoing is that this 'community' has many if
27 not all the hallmarks of a religious cult: (i) a charismatic, (ii) self-assured, (iii) self-
28 designated 'visionary' leader, with (iv) dubious credentials, who (v) makes lofty and
29 (vi) scientifically-unproven promises with (vii) absolute certainty, which (viii) her
30 would-be acolytes must take on faith subject, for good measure, to either (ix)

1 choreographed and (x) overly-enthusiastic cheerleading and praise for their loyal
2 commitment to the leader's 'vision', or else (xi) vindictive retaliatory punishment of
3 any dissent, including banishment from discussion groups, social media
4 'unfriending,' and coordinated campaigns of libel, character-attack, intimidation,
5 tortious interference, and other harassment orchestrated, on information and belief,
6 by Black herself. Multiple Plaintiffs, and others similarly situated, have experienced
7 all of the foregoing.

8 93. Defendant Black, along with DOE(S) operating via social media and
9 other media at Black's behest, on information and belief (collectively, "cyberbully
10 Defendants"), did and do attempt to discredit anyone making any negative feedback
11 about FasciaBlaster. Black did and does undertake or encourage these acts (i) for the
12 plain commercial purpose of protecting her FasciaBlaster brand, if not also (ii) in a
13 cognitively dissonant effort to safeguard the lofty social position she believes she
14 has earned, which (subject to proof) has clearly instilled in her a personal animus
15 against the audacity of any dissension. As addressed *supra*, and in other ways
16 subject to proof, some Plaintiffs and others similarly situated have been *inter alia*
17 publicly disparaged, baselessly accused of crimes, and threatened e.g. with reprisals
18 against their personal businesses by the cyberbully Defendants.

19 94. In addition to the wrongful acts which the cyberbully Defendants have
20 perpetrated in their own names, on information and belief one or more of the
21 cyberbully Defendants has created fake Facebook user accounts for the purpose of
22 defaming, harassing, intimidating, and bullying certain named Plaintiffs and others
23 who had honestly publicized negative experiences with FasciaBlaster. As addressed
24 *supra*, Plaintiffs have good cause to conclude that one of the cyberbully Defendants
25 manufactured "Sarah Minow" in order to undermine and attack dissatisfied
26 customers, including some of the named Plaintiffs, and to rally others to do so. On
27 information and belief, the same can be said of Facebook personae "Georgia Peach,"
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1 “Brown Shuga,” and “Nikki Kaviani” who likewise did and do habitually harass,
2 threaten, and bully anybody with the temerity to discuss negative ‘blasting’
3 experiences on Facebook, including some of the named Plaintiffs.

4 95. Since first being contacted by antagonistic Facebook discussion group
5 participants such as Ms. Minow, Ms. Peach, Ms. Shuga, and Ms. Kaviani, some
6 Plaintiffs have been targeted for defamation, harassment and bullying in other
7 arenas. For example, wholly fabricated criticisms about some Plaintiffs’ personal
8 business enterprises have sprung up e.g. on Facebook, Yelp.com, and other crowd-
9 sourced commercial review websites/applications. On information and belief, said
10 professional defamation and attempted tortious interference is part and parcel of
11 Defendant Black’s broader scheme—along with unwarranted, vindictive personal
12 attacks and bizarre threats—to silence her growing chorus of actual, human critics.

13 96. The behavior of a particular group of Facebook personae (which might
14 be the same persona) operating on Defendants’ behalf under the pseudonyms “Black
15 Ryno Security”, “Ryno Black”, “Ryno Brandt”, and “Ryno Ulili” (collectively,
16 “Ryno”) is of particular concern. Multiple Plaintiffs, and many others similarly
17 situated, have been made to feel anxious, exposed, unsafe, and afraid by Ryno’s
18 conduct, including *inter alia*:

19 (a) Ryno made numerous public comments on Facebook, as well as
20 in private messages, accusing Defendants’ critics of various crimes and
21 deceptions, and vaguely threatening that e.g. women are “putting
22 themselves at risk” by their participation in one of the independent
23 Facebook groups which have been created by and for the many
24 dissatisfied FasciaBlaster users.

25 (b) On July 8, 2017, Ryno posted a warning message on Facebook
26 listing 51 FasciaBlaster critics by name, and encouraging e.g. business
27 owners to block these critics from their Facebook pages in retaliation.
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1 (c) On information and Belief, Ryno did and does run background
2 checks on Defendants' critics, having on at least three occasions
3 publicized critics' having been arrested, e.g. for DUI; what any of that
4 had to do with FasciaBlaster remains to be seen, but plainly it was
5 intended to harass and intimidate.

6 (d) Some FasciaBlaster critics have had their Facebook accounts
7 hacked, finding earlier private messages from Defendant Black deleted
8 by Ryno or someone associated with Ryno, on information and belief.
9 Plaintiffs are informed and believe that these hacking victims may have
10 used the same password to register with Defendants' online resources
11 that they use for Facebook, thereby inadvertently providing Defendants
12 with those passwords. Facebook tracks profile logins by geographical
13 location, and some of these hacking victims, who do not live in Texas,
14 received indication from Facebook that their accounts had been
15 accessed by someone in Texas, the same state where Defendant ADBI
16 is headquartered.

17 **FIRST CAUSE OF ACTION**
18 **(FALSE ADVERTISING)**

19 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

20 97. Paragraphs 1 through 96 are incorporated by reference as though fully
21 set forth herein.

22 98. All Defendants are subject to *respondeat superior* liability for the
23 wrongful acts and omissions of any agent or employee of any of them, undertaken in
24 the course of any conduct for the commercial benefit of Defendants, collectively or
25 individually. Among the specified Defendants, individuals may also be jointly liable
26 for their own acts subject to proof.

27 99. Agents and/or employees of the Defendants—including Defendant
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1 Black herself in both her personal capacity as a proud ‘celebrity mogul’ and in her
2 capacity as President and spokesperson for the corporate co-Defendants which bear
3 her name or initials—publicly disseminated untrue and/or misleading statements
4 with the intention to induce customers to purchase Defendants’ commercial products
5 in reliance on said untrue and/or misleading statements.

6 100. Cal. Civ. Code § 1770 (a)(2) deems it unlawful to “[m]isrepresent[] the
7 source, sponsorship, *approval, or certification* of goods and services.” (Emphasis
8 added.) Defendants misrepresented the FDA’s designation of FasciaBlaster as a
9 “Class 1 medical device (massager)”—i.e. with the same degree of regulation as
10 dental floss—as constituting the FDA’s having bestowed its blessing on serious and
11 complex health claims and uses, far afield of the presumably modest benefits and
12 uses which someone at FDA once had in mind, regarding what had doubtless
13 seemed simply to be one of the market’s many innocuous commercial implements
14 for gentle self-massage, on information and belief.

15 101. Cal. Civ. Code § 1770 (a)(5) prohibits “[r]epresenting that goods or
16 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
17 quantities which they do not have or that a person has a sponsorship, approval,
18 status, affiliation, or connection which he or she does not have.” Defendants’
19 marketing did and does contravene this provision in numerous ways, including *inter*
20 *alia*: false representations of FDA approval of FasciaBlaster’s marketed techniques
21 for use; claims that it has been subject to “double-blind” testing, which it was not;
22 guarantees that it “cures” cellulite, improves muscle tone, rejuvenates skin, etcetera,
23 all of which the Plaintiffs have found to be far from the truth; and strenuous denials
24 regarding its dangerous effect on estrogen and other hormone levels, even while
25 Defendants were aware of, and attempting to squelch, reports to the contrary.

26 102. Defendants further violated Cal. Civ. Code § 1770 (a)(5) by their false
27 assertions of the medical and/or academic qualifications of individuals associated
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1 with FasciaBlaster, including, *inter alia*:

- 2 (a) representations that Defendant Black is a “scientist” and
3 Licensed Massage Therapist, when on information and belief she has
4 no such license and no formal scientific education;
- 5 (b) repeated references in promotional materials (videos and
6 podcasts), by Black, to former FasciaBlaster spokesperson, Dari Samia,
7 as “Doctor Dari,” when in fact Mr. Samia is a nurse, not a doctor;
- 8 (c) references to putative researcher Ms. Stross as a “neuroscientist,”
9 though she is in fact a massage therapist who, on information and
10 belief, has no such academic background; and
- 11 (d) references to putative researcher Jameson as “Doctor Bart,”
12 though he is in fact an athletic trainer who, on information and belief,
13 has no medical or scientific qualifications of any kind.

14 103. The foregoing misleading and/or false designations of
15 medical/academic authority are/were evinced, and exacerbated, when on multiple
16 occasions Black, Samia, Stross, Jameson, and others did and do purport to be
17 qualified to dispense, and did and do dispense, advice on issues of a medical nature,
18 including *inter alia* regarding:

- 19 (a) ‘blasting’ while pregnant (e.g. that it is “perfectly safe”¹⁵);
20 (b) serious post-partum considerations such as Diastasis Recti,
21 separation of the large abdominal muscles (e.g. that ‘blasting’ fixes it);
22 (c) stroke (i.e. that it is not a risk);

23
24 ¹⁵ The “Terms & Conditions” section of Defendants’ AshleyBlackGuru.com
25 webpage *currently* offers a lengthy warning against certain uses of FasciaBlaster,
26 e.g. while pregnant, over varicose veins. On information and belief, this disclaimer
27 was added on or around May 22, 2017, prior to which Defendants—Defendant
28 Black most enthusiastically—expressly made exactly opposite assertions of safety
and usefulness, as described herein.

- (d) Multiple Sclerosis (e.g. that 'blasting' can cure it);
- (e) Parkinson's Disease (e.g. that 'blasting' helps with symptoms)
- (f) brain injury;
- (g) vertigo;
- (h) peripheral neuropathy;
- (i) Fibromyalgia;
- (j) Sciatica;
- (k) varicose veins (e.g. "you can use FasciaBlaster to ERASE your varicose veins!"); and
- (l) other delicate medical topics, subject to proof.

104. The FDA Inspection Report, for its part, presents eight unapproved and illegal medical claims by Defendants, out of many more on information and belief. (See Para. 89(h), *supra*.) The FDA Inspection Report further notes that Defendant ADBI "had no raw data for regulatory review[]" from the putative clinical trial¹⁶ which Defendants tout authoritatively for marketing purposes. (See Para. 89(k), *supra*.) In light of the foregoing, Plaintiffs allege on information and belief that Defendants did or do fabricate the data, or direct or solicit DOE Defendant(s) to do so, in order to falsely advertise the benefits of 'blasting'.

105. Further, the FDA Inspection Report evinces Defendants' willful blindness to the relationship between FasciaBlaster and the many injuries its users have informed Defendants about. (See Para. 89(e), *supra*.) Since first entering commerce in (on information and belief) 2015, through at least July 18, 2017, Defendants were and may still be violating FDA regulations by their lack of

¹⁶ This presumably refers only to the putative clinical trial that actually occurred, to the degree it did, as opposed to one of the scientific studies which, on information and belief, Defendants have falsely claimed to have performed. (See Para. 84(b), *supra*.)

1 reporting (MDR) or remedying (CAPA) procedures. Plaintiffs allege on information
2 and belief that these failures were the obvious and natural result of the reckless
3 indifference demonstrated by Defendants' failure to meaningfully investigate the
4 connection between 'blasting' and the numerous serious injuries reported to
5 Defendants during that long time span. On information and belief, Defendants
6 reasoned that they had more to gain by turning a blind eye. Defendants knew of
7 injurious side effects, thus the failure to investigate their connection to FasciaBlaster
8 ought reasonably to impute knowledge thereof to Defendants. On information and
9 belief, while touting a nigh-miraculous laundry list of health benefits from
10 'blasting', Defendants simultaneously, intentionally withheld actual and/or imputed
11 knowledge of serious dangers from the buying public.

12 106. Accordingly, Plaintiffs and others similarly situated have been directly
13 and proximately harmed by acts and omissions of Defendants. As such, the
14 Plaintiffs, in their personal capacities and on behalf of all others similarly situated
15 pursuant to Cal. Civ. Code §§ 1781 and 1782(d), hereby seek injunctive relief to
16 curtail and, to the degree possible, reverse all of Defendants' deceptive marketing
17 practices before Plaintiffs, Class members, and other vulnerable people might be
18 further harmed thereby. Plaintiffs hereby request that the Court enjoin Defendants to
19 immediately undertake the following remedial commercial actions, to the degree
20 possible, in or on every medium Defendants did or do use for any marketing
21 purpose, including prominently and permanently on the 'Home' page of every
22 website and social media profile controlled by Defendant:

- 23 (a) publicly and specifically retract all false health claims pertaining
24 to FasciaBlaster that Defendants have previously made;
25 (b) cease and refrain from henceforth making any definitive health
26 claims pertaining to FasciaBlaster which are not specifically approved
27 by an accredited health-related institution, to be approved by the
28

1 Plaintiffs;

2 (c) supplement Defendant's existing "Terms & Conditions"
3 disclosure of possible side effects to include *all* side effects for which
4 Plaintiff-approved health professionals suspect a connection to
5 'blasting' subject to proof, including *inter alia* anxiety, dizziness, heart
6 palpitations, bruise staining, sagging skin, crêpe skin, worsened
7 cellulite, etc.

8 (d) include in all future promotional material—and to the extent
9 possible, amend any existing promotional material to include—the
10 statement "Ashley Black is Not a Medical Professional. Consult Your
11 Doctor Before Use" in writing no more than one font-size smaller than
12 the biggest font-size appearing anywhere else in the advertisement if
13 the advertisement is in print, or at the beginning and end of every
14 promotional video or audio recording, at the same or louder speaking
15 volume as the rest of the recording;

16 (e) redesign and manufacture FasciaBlaster without BPA, and
17 amend any existing promotional material to include the statement
18 "WARNING: FasciaBlasters Sold Before [DATE] May Contain BPA
19 And Should Not Be Used In High Temperature Conditions".

20 (f) institute MDR and CAPA procedures assiduously compliant with
21 all FDA regulations, AMA guidelines, etc.

22 (g) publicize offer for full refund of any FasciaBlaster device or
23 accessory, no questions asked, with no expiration date; and

24 (h) record and publicly display a video online wherein Black
25 apologizes by name to each individual who will have provided formal
26 notice of having been unfairly maligned or intimidated online by one of
27 the Defendants or by any third party on behalf of any Defendant.
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1 Plaintiffs further request that the Court enjoin Defendants to immediately:

- 2 (i) cease and refrain from all promotion and sales of FasciaBlaster
3 worldwide until Defendants have verifiably undertaken all of the
4 remedial commercial actions specified *supra* at subsections (a-h) of this
5 paragraph;
6 (j) provide every participant from Defendant's putative clinical trial
7 with her own full medical file i.e. all medical information gathered
8 about the participant during the ASPI study;
9 (k) after all private medical information has been provided to the
10 participants, Defendant will verifiably destroy any remnant or record of
11 any of the foregoing information still in its possession; and
12 (l) for any future effort at a scientific study regarding FasciaBlaster,
13 Defendant will adhere to all FDA and American Medical Association
14 ("AMA") regulations and guidelines, including IRB supervision.

15 Plaintiffs also seek attorney's fees and costs of suit incurred herein.

16 **SECOND CAUSE OF ACTION**

17 **(STRICT PRODUCTS LIABILITY—DESIGN DEFECT)**

18 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

19 107. Paragraphs 1 through 106 are incorporated by reference as though fully
20 set forth herein.

21 108. The specified Defendants are subject to *respondeat superior* liability
22 for the wrongful acts and omissions of any agent or employee of any of them,
23 undertaken in the course of any conduct for the commercial benefit of Defendants,
24 collectively or individually. Among the specified Defendants, individuals may also
25 be jointly liable for their own acts subject to proof.

26 109. The specified Defendants are/were responsible for and/or perform(ed)
27 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.
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1 110. As described herein *supra*, and on other occasions subject to proof,
2 FasciaBlaster did not and routinely does not perform as safely as an ordinary
3 consumer would expect it to perform when used or misused in an intended or
4 reasonably foreseeable way.

5 111. As described herein *supra*, and in other ways subject to proof, the
6 gravity of the potential harm resulting from the use of FasciaBlaster is extremely
7 high.

8 112. As described herein *supra*, and in other ways subject to proof, the
9 named Plaintiffs, and many others similarly situated, were harmed by their use of
10 FasciaBlasters.

11 113. FasciaBlaster's failure to perform safely was a substantial factor in
12 causing harm to the named Plaintiffs, and to many others similarly situated.

13 114. On information and belief, the entire premise of achieving health
14 benefits from 'blasting' one's fascia, which premise underlies FasciaBlaster's
15 design, is unfounded and dangerous. On information and belief, no product designed
16 to 'blast' fascia could or would be medically sound if used for that purpose.

17 115. The benefit of FasciaBlaster's design, if any, is significantly
18 outweighed by the gravity of the potential harm resulting from the use of
19 FasciaBlaster, which is very high as described herein *supra*, and in other ways
20 subject to proof.

21 116. The benefit of FasciaBlaster's design, if any, is significantly
22 outweighed by the likelihood that harm will occur from FasciaBlaster use, which is
23 very high as described herein *supra*, and in other ways subject to proof.

24 117. FasciaBlaster is fundamentally dangerous, likely to cause unexpected
25 harm(s) to its users, and irredeemable by any putative benefit. As such, the design of
26 FasciaBlaster—including all versions of devices marketed under that or a similar
27 name for similar use—is defective under both the 'customer expectation' and 'risk-

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1 benefit' tests. The foregoing is the direct and proximate cause of harms suffered by
2 the Plaintiffs and others similarly situated, to whom the specified Defendants are
3 therefore strictly liable for all damages associated with FasciaBlaster.

4 **THIRD CAUSE OF ACTION**

5 **(STRICT PRODUCTS LIABILITY—FAILURE TO WARN)**

6 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

7 118. Paragraphs 1 through 117 are incorporated by reference as though fully
8 set forth herein.

9 119. The specified Defendants are subject to *respondeat superior* liability
10 for the wrongful acts and omissions of any agent or employee of any of them,
11 undertaken in the course of any conduct for the commercial benefit of Defendants,
12 collectively or individually. Among the specified Defendants, individuals may also
13 be jointly liable for their own acts subject to proof.

14 120. The specified Defendants are/were responsible for and/or perform(ed)
15 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

16 121. As described herein *supra*, and in other ways subject to proof,
17 FasciaBlaster use carries with it potential risks and/or side effects that were known
18 to the specified Defendants, and/or knowable in light of medical knowledge
19 generally accepted in the scientific community, at all relevant times herein. Such
20 knowledge may appropriately be imputed to the Defendants due to, *inter alia*:

21 (a) the significant volume of customer complaints which any
22 Defendant, or agent or employee thereof, caused to be erased from
23 Facebook discussion groups and elsewhere;

24 (b) 70 or more customer complaints lodged directly with a
25 Defendant or agent or employee thereof prior to July 18, 2017, at least,
26 which Defendants intentionally or recklessly neglected to meaningfully
27 investigate, on information and belief (see e.g. Para. 89(a-e), *supra*);
28

1 (c) data from the putative clinical trial undertaken by Defendants
2 which, on information and belief—based on, *inter alia*, Defendants’
3 refusal to disclose said data to the participants, notwithstanding
4 promises and privacy obligations to do so, and inability to provide it to
5 the FDA Investigator, notwithstanding regulatory obligation to do so—
6 support Plaintiffs’ allegations herein of risks and side effects, if not also
7 of additional risks and side effects subject to proof; and

8 (d) the fact that, on information and belief—based on, *inter alia*,
9 photographic evidence—Defendant Ashley Black herself has suffered
10 or is suffering from undisclosed risks and side effects of ‘blasting,’
11 including *inter alia* severely resurgent cellulite on her own legs, which
12 is regrettable and would not merit mentioning except under the
13 circumstances giving rise to this action.

14 122. As described herein *supra*, and in other ways subject to proof,
15 FasciaBlaster’s potential risks and/or side effects did and do present a substantial
16 danger when FasciaBlaster is used or misused in an intended or reasonably
17 foreseeable way.

18 123. As described herein *supra*, and for other reasons subject to proof,
19 ordinary customers such as the named Plaintiffs, and others similarly situated, did
20 not, do not, and would not recognize the potential risks and/or side effects of
21 FasciaBlaster use, particularly in light of Defendants’ aggressive wide-scale
22 marketing.

23 124. As described herein *supra*, and in other ways subject to proof, the
24 specified Defendants failed to adequately warn the public about the potential risks
25 and side effects of FasciaBlaster use, and failed to adequately instruct the public on
26 ways, if any exist, that the potential risks and side effects of FasciaBlaster use might
27 be avoided.
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1 125. The specified Defendants' failures to provide the public with either
2 sufficient warnings about FasciaBlaster, or instructions for its safe use (if any safe
3 use is possible), was a substantial factor in causing the harms described herein, and
4 any other harms subject to proof, suffered by the Plaintiffs and any others similarly
5 situated.

6 126. At all relevant times herein, the specified Defendants could, can, and
7 should, but did and do fail to, warn customers and potential customers of serious
8 risks and/or side effects from FasciaBlaster use. The foregoing acts and omissions
9 by Defendants were the direct and proximate cause of harms suffered by Plaintiffs
10 and others similarly situated, to whom the specified Defendants are therefore strictly
11 liable for all damages associated with FasciaBlaster.

12 **FOURTH CAUSE OF ACTION**
13 **(NEGLIGENCE)**

14 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

15 127. Paragraphs 1 through 126 are incorporated by reference as though fully
16 set forth herein.

17 128. The specified Defendants are subject to *respondeat superior* liability
18 for the wrongful acts and omissions of any agent or employee of any of them,
19 undertaken in the course of any conduct for the commercial benefit of Defendants,
20 collectively or individually. Among the specified Defendants, individuals may also
21 be jointly liable for their own acts subject to proof.

22 129. The specified Defendants did or do perform, supervise, and/or were or
23 are otherwise responsible for the manufacture, testing, marketing, distribution,
24 and/or sale of FasciaBlaster.

25 130. The specified Defendants knew or reasonably should have known that
26 FasciaBlaster was dangerous or likely to be dangerous when used or misused in a
27 reasonably foreseeable manner.
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1 131. The specified Defendants knew or reasonably should have known that
2 customers and potential customers would not be aware of the potential danger(s) of
3 FasciaBlaster use.

4 132. As described herein *supra*, and in other ways subject to proof, the
5 specified Defendants failed to adequately warn the public about the potential
6 dangers of FasciaBlaster use. Further, the specified Defendants failed to adequately
7 instruct the public on ways, if any exist, that the potential dangers of FasciaBlaster
8 use might be avoided. Even if and to the degree any specified Defendant(s) learned
9 about any foreseeable danger from FasciaBlaster use after any sale(s) had already
10 been made, the specified Defendant(s) nevertheless failed to issue a recall.

11 133. A reasonable manufacturer, tester, marketer, distributor, or seller under
12 the same or similar circumstances as the specified Defendants', knowing that a
13 device he/she/it manufactures/tests/markets/distributes/sells is foreseeably
14 dangerous, would warn the public about that danger and/or instruct the public on
15 safe use of the device, if any safe use exists, or upon learning of such danger after
16 sale(s) would issue a recall of the device. Such reasonable actor would do the
17 foregoing not only as a matter of obvious business diligence, but hopefully per the
18 basic care and consideration for the general wellbeing of other people on which
19 civilized society relies.

20 134. Because the specified Defendants knew or reasonably should have
21 known that FasciaBlaster is foreseeably dangerous, yet failed to so warn or instruct
22 the public, or issue a recall, notwithstanding that such is what reasonably careful
23 actors under the same or similar circumstances would do, the specified Defendants
24 were and are negligent in supervising and/or conducting the manufacture, testing,
25 marketing, distribution, and/or sale of FasciaBlaster. Such negligence was the direct
26 and proximate cause of harms suffered by the Plaintiffs and others similarly
27 situated, to whom the specified Defendants are therefore liable for all damages
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1 associated with FasciaBlaster.

2 135. Each Plaintiff, and many others similarly situated, suffered serious
3 emotional distress, including one or more of suffering, anguish, fright, horror,
4 nervousness, anxiety, grief, worry, shock, humiliation, and shame.

5 136. The specified Defendants' negligence was a substantial factor in
6 causing the serious emotional distress of Plaintiffs and many others similarly
7 situated.

8 137. In light of the foregoing, the specified Defendants are liable for general
9 damages from negligent infliction of emotional distress upon the Plaintiffs and
10 others similarly situated.

11 **FIFTH CAUSE OF ACTION**

12 **(NEGLIGENCE PER SE)**

13 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

14 138. Paragraphs 1 through 137 are incorporated by reference as though fully
15 set forth herein.

16 139. The specified Defendants are subject to *respondeat superior* liability
17 for the wrongful acts and omissions of any agent or employee of any of them,
18 undertaken in the course of any conduct for the commercial benefit of Defendants,
19 collectively or individually. Among the specified Defendants, individuals may also
20 be jointly liable for their own acts subject to proof.

21 140. The specified Defendants are/were responsible for and/or perform(ed)
22 the manufacture, marketing, distribution, and/or sale of FasciaBlaster.

23 141. The specified Defendants are and/or were negligent in supervising
24 and/or conducting the manufacture, testing, marketing, distribution, and/or sale of
25 FasciaBlaster.

26 142. Personal health information ("PHI") pertaining to Plaintiffs Lanum,
27 Dorenkamp, and others similarly situated (e.g. more than 30 other participants in
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1 any putatively scientific testing undertaken and/or commissioned by the specified
2 Defendants, on information and belief) is subject to strict protections by statutes and
3 regulations, including *inter alia* Health Insurance Portability and Accountability Act
4 of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical
5 Health Act ("HITECH Act"), DHHS's 'HIPAA Omnibus Rule,' and California's
6 Confidentiality of Medical Information Act [Cal. Civ. Code §§ 56-56.37]
7 ("CMIA").

8 143. Acts and omissions by the specified Defendants caused, contributed to,
9 facilitated, or incited third parties to engage in unlawful disclosure(s) and/or other
10 misuse(s) of PHI pertaining to Plaintiffs Lanum, Dorenkamp, and others similarly
11 situated, including *inter alia* commercial use of Lanum's, Dorenkamp's, and others'
12 PHI for such improper purposes and effects as:

- 13 (a) advertising FasciaBlaster in various media;
- 14 (b) to shame, embarrass, and discredit Lanum, Dorenkamp, and
- 15 others via social media in retaliation for honest negative feedback;
- 16 (c) failing and/or refusing to provide Lanum, Dorenkamp, and others
- 17 with their own PHI upon request; and
- 18 (d) in other ways subject to proof.

19 144. As described herein *supra*, and in other ways subject to proof, the
20 specified Defendants' unlawful disclosure(s) and other misuse(s) of PHI was/is a
21 substantial factor in causing harm to Plaintiffs, and others similarly situated,
22 including *inter alia* injury to personal and professional reputation, and emotional
23 distresses such as suffering, anguish, fright, horror, nervousness, anxiety, grief,
24 worry, shock, humiliation, and shame.

25 145. In light of the foregoing, the specified Defendants are strictly liable for
26 special and general damages, including for emotional distress, upon the Plaintiffs
27 and others similarly situated.
28

SIXTH CAUSE OF ACTION
(GROSS NEGLIGENCE)

Against Defendants Black, ADBIH, ADBI, and applicable DOES

146. Paragraphs 1 through 145 are incorporated by reference as though fully set forth herein.

147. The specified Defendants are subject to *respondeat superior* liability for the wrongful acts and omissions of any agent or employee of any of them, undertaken in the course of any conduct for the commercial benefit of Defendants, collectively or individually. Among the specified Defendants, individuals may also be jointly liable for their own acts subject to proof.

148. The specified Defendants are/were responsible for and/or perform(ed) the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

149. As described herein *supra*, and in other ways subject to proof, certain acts and omissions by the specified Defendants are/were so severely careless that they constitute(d) an extreme departure from the ordinary standard of conduct. Such acts and omissions include, *inter alia*:

(a) unscientific and improper execution of Defendants' putative FasciaBlaster clinical trial falling far short of ordinary scientific practice both procedurally and administratively, including in the violation of HIPAA and other rights of participants both during and after the study;

(b) unabating aggressive marketing of FasciaBlaster, including with unfounded medical claims, notwithstanding Defendants' receipt of, on information and belief, over 70 direct customer complaints regarding serious side effects as of July 18, 2017, at least;

(c) failure to meaningfully investigate over 70 direct customer complaints regarding serious side effects; and

1 (d) unabating aggressive marketing of FasciaBlaster, including with
2 unfounded medical claims, in conjunction with the wide-scale summary
3 deletion of any negative customer feedback posted in putatively open
4 and honest social media forums controlled by Defendants.

5 150. Putting aside statutes and regulations against conducting a merely
6 methodologically-flawed scientific study, it is a *far* more extreme deviation from
7 ordinary standards of care when that study also e.g.: (i) lacks IRB oversight, or (ii)
8 any guidance from a genuine medical doctor for that matter, while promotional
9 materials make both subtle and overt misrepresentations regarding (iii) procedures
10 (e.g. “double-blind”) and (iv) academic and medical credentials (e.g. “Dr. Bart”),
11 including with respect to putative researchers who (v) take participants’ medical and
12 privacy rights far more lightly than required by FDA regulations, and (vi) fail to
13 produce study data upon request by participants and (vii) an FDA Investigator.

14 151. On information and belief, the foregoing precise scenario took place,
15 *inter alia*, causing harms suffered by Plaintiffs Lanum and Dorenkamp, more than
16 30 other participants in Defendants’ putative clinical trial, and thereafter every
17 subsequent FasciaBlaster user who reasonably relied on, at best, willfully ignorant
18 assertions about the putative clinical trial’s legitimacy according to the Defendants.

19 152. Multiple acts and omissions by the specified Defendants require(d)
20 such extreme departures from ordinary standards of care that they constitute(d)
21 gross negligence, constituting the direct and proximate cause of harms suffered by
22 the Plaintiffs, and others similarly situated, to whom the Defendants are therefore
23 liable for damages associated with FasciaBlaster e.g. after pertinent customer
24 feedback was ignored or censored, after the putative clinical trial, etc.

25 153. Each Plaintiff and many others similarly situated suffered serious
26 emotional distress, including one or more of suffering, anguish, fright, horror,
27 nervousness, anxiety, grief, worry, shock, humiliation, and shame.
28

1 154. The specified Defendants' gross negligence was a substantial factor in
2 causing the serious emotional distress of Plaintiffs and many others similarly
3 situated.

4 155. In light of the foregoing, the specified Defendants are liable for actual
5 and general damages, including from infliction of emotional distress, upon the
6 Plaintiffs and others similarly situated.

7 **SEVENTH CAUSE OF ACTION**
8 **(RECKLESS MISCONDUCT)**

9 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

10 156. Paragraphs 1 through 155 are incorporated by reference as though fully
11 set forth herein.

12 157. The specified Defendants are subject to *respondeat superior* liability
13 for the wrongful acts and omissions of any agent or employee of any of them,
14 undertaken in the course of any conduct for the commercial benefit of Defendants,
15 collectively or individually. Among the specified Defendants, individuals may also
16 be jointly liable for their own acts subject to proof.

17 158. The specified Defendants are/were responsible for and/or perform(ed)
18 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

19 159. As described herein *supra*, and in other ways subject to proof, certain
20 acts and omissions by the specified Defendants did and do evince deliberate
21 disregard for the rights and safety of every FasciaBlaster user and potential user,
22 which disregard did and does subject Plaintiffs and others similarly situated to a
23 high probability of the array of injuries described herein, if not more subject to
24 proof. For example, when any Defendant, or officer, employee, or agent thereof,
25 summarily deletes from putatively open Internet discussion forums any negative
26 user feedback in the nature of e.g. 'blasting is messing with my hormone levels,'
27 then banishes the commenter from the forum and threatens to or does retaliate due to
28

1 that honest feedback, such deletion, banishment and threats/retaliation, in order to
 2 chill honest feedback, demonstrate willful and conscious disregard for the health of
 3 every contemporaneous or future FasciaBlaster user who e.g. might be reviewing
 4 the putatively open forum in an effort to determine whether *her own* early symptoms
 5 of hormone imbalance might be attributable to her recently undertaken 'blasting'
 6 regimen. Such interference, with plainly germane third-party warnings, for purely
 7 commercial reasons at best, brazenly disregards the safety of all FasciaBlaster users.
 8 On information and belief, the specified Defendants perpetrated the foregoing
 9 scenario on many occasions.

10 160. Moreover, the specified Defendants, officer(s), director(s), and/or
 11 manager(s) thereof, did and/or¹⁷ do fail to make substantial changes e.g. to product
 12 design, instructions for product use, or marketing language or strategy. Said failures,
 13 along with Defendants' willfully ignoring potentially important feedback from
 14 hundreds of consumers—e.g. by their censorship and retaliatory defamation
 15 described above, by their failure to develop, maintain, or implement MDR and
 16 CAPA procedures pursuant to FDA regulations (see Para. 89(a-e), *supra*), by their
 17 conducting a putative clinical trial and then hiding and ignoring the results, on
 18 information and belief—taken together constitute a pattern of deliberate disregard
 19 for the health and safety of others in favor of keeping sales numbers as high as
 20 possible.

21 161. The foregoing is far more egregious than mere mistake or
 22 incompetence: it is recklessness, and the direct and proximate cause of harms
 23 suffered by Plaintiffs, and all others similarly situated, to whom the specified
 24

25 ¹⁷ On information and belief, Defendants updated the "Terms & Conditions"
 26 section of the AshleyBlackGuru.com webpage on May 22, 2017 (see FN.13, *supra*),
 27 but any effect thereof on their larger marketing approach is subject to proof.
 28

1 Defendants are therefore liable for general and special damages associated with
2 FasciaBlaster, and for punitive damages pursuant to Cal. Civ. Code § 3294,
3 exemplifying the important public policy interest in deterring other commercial
4 actors from displaying the same level of disregard for societal health and wellbeing
5 that Defendants did and do amply display.

6 **EIGHTH CAUSE OF ACTION**
7 **(BREACH OF EXPRESS WARRANTY)**

8 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

9 162. Paragraphs 1 through 161 are incorporated by reference as though fully
10 set forth herein.

11 163. The specified Defendants are subject to *respondeat superior* liability
12 for the wrongful acts and omissions of any agent or employee of any of them,
13 undertaken in the course of any commercial conduct for the benefit of Defendants,
14 collectively or individually. Among the specified Defendants, individuals may also
15 be jointly liable for their own acts subject to proof.

16 164. The specified Defendants are/were responsible for and/or perform(ed)
17 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

18 165. As described herein *supra*, and in other ways subject to proof, the
19 specified Defendants were responsible for, personally made, and/or publicized
20 statements of purported fact, to Plaintiffs and others similarly situated, pertaining to
21 e.g. the use of FasciaBlaster, including *inter alia* that it eliminates the appearance of
22 cellulite (e.g. "this will absolutely work for everyone"), improves skin tone and
23 muscle definition, does not interfere with hormone levels, is a treatment for MS,
24 Parkinson's disease, and other neurological conditions, can fix *inter alia* frozen
25 shoulder, rotator cuff injury, tendonitis, shin splints, Iliotibial band syndrome,
26 Plantar Fasciitis, and posture, and many other such assertions reflected herein.

27 166. As described herein *supra*, and in other ways subject to proof, multiple
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1 statements of purported fact which Defendants made and/or publicized, or induced
2 others to make and/or publicize, were presented as more than mere opinions or
3 personal recommendations, but rather in the nature of performance guarantees,
4 including with the express and implied weight of authority conferred by *inter alia*
5 medical and academic credentials falsely asserted by Defendants, and factual
6 misrepresentations by Defendants as to putative clinical trial procedures and results.

7 167. As described herein *supra*, and in other ways subject to proof,
8 FasciaBlaster did and does fail to perform as guaranteed by Defendants, as evinced
9 in numerous respects including, *inter alia* and most demonstrably, the fact that many
10 Plaintiffs and others similarly situated—including, on information and belief,
11 Defendant Black herself—currently exhibit e.g. a more pronounced appearance of
12 cellulite than they did before using FasciaBlaster.”

13 168. Some Plaintiffs and many others similarly situated have informed
14 Defendants that FasciaBlaster’s design is defective for purposes of achieving the
15 myriad benefits promised by Defendants.

16 169. Defendants did and do fail to repair, redesign, or reengineer
17 FasciaBlaster in order to make it perform as expressly represented by Defendants.
18 Further, Defendants did and do fail to notify the public, including Plaintiffs and
19 others similarly situated, that FasciaBlaster’s design is defective for purposes of the
20 myriad benefits promised by Defendants.

21 170. FasciaBlasters’ failure to perform as represented was and is a
22 substantial factor in causing harm to Plaintiffs and others similarly situated.

23 171. In light of the foregoing, the specified Defendants are liable to
24 Plaintiffs and others similarly situated for breach of Defendants’ express warranties
25 pertaining to FasciaBlaster’s abilities to provide health and aesthetic benefits.

26 \\\

27 \\\

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1 **NINTH CAUSE OF ACTION**
2 **(BREACH OF IMPLIED WARRANTY – FITNESS FOR PARTICULAR**
3 **PURPOSE)**

4 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

5 172. Paragraphs 1 through 171 are incorporated by reference as though fully
6 set forth herein.

7 173. The specified Defendants are subject to *respondeat superior* liability
8 for the wrongful acts and omissions of any agent or employee of any of them,
9 undertaken in the course of any commercial conduct for the benefit of Defendants,
10 collectively or individually. Among the specified Defendants, individuals may also
11 be jointly liable for their own acts subject to proof.

12 174. The specified Defendants are/were responsible for and/or perform(ed)
13 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster. The
14 Plaintiffs and others similarly situated purchased FasciaBlasters from the
15 Defendants, and the latter did and do know or have reason to know that every
16 purchaser did or does intend to use the device for the purpose of achieving one or
17 more results which Defendants did or do assert that 'blasting' achieves.

18 175. The specified Defendants know or have reason to know that Plaintiffs
19 and others similarly situated did, or will, rely on Defendants' skill, judgment, and/or
20 putative medical or academic authority to design, fabricate, test, market, and sell a
21 product suitable for the purposes eagerly promoted by Defendants. Plaintiffs and
22 others similarly situated did and do justifiably rely on Defendants' skill, judgment,
23 and/or putative medical or academic authority, and will continue to do so as long as
24 the Defendants continue in their course of commercial conduct at issue, barring e.g.
25 injunctive relief.

26 176. As described herein *supra*, and in other ways subject to proof,
27 FasciaBlaster was not, is not, and will not be suitable for some if not all of the
28

1 purposes for which Plaintiffs and other similarly situated did or will purchase it. As
2 described herein *supra*, and in other ways subject to proof, some Plaintiffs and many
3 others similarly situated have taken reasonable steps, within a reasonable time, to
4 notify the Defendants that FasciaBlaster is not suitable for some if not all of the
5 purposes for which Plaintiffs and others similarly situated did or will purchase it.

6 177. As described herein *supra*, and in other ways subject to proof,
7 FasciaBlaster's unsuitability for some if not all of the purposes for which Plaintiffs
8 and other similarly situated did or will purchase it was, is, or will be a substantial
9 factor in causing harm to Plaintiffs and others similarly situated.

10 178. In light of the foregoing, the specified Defendants are liable to
11 Plaintiffs and others similarly situated for breach of implied warranties of
12 FasciaBlaster's fitness for particular purpose, i.e. to provide the health and aesthetic
13 benefits advertised by Defendants, as relied upon by Plaintiffs.

14 **TENTH CAUSE OF ACTION**

15 **(BREACH OF IMPLIED WARRANTY – MERCHANTABILITY)**

16 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

17 179. Paragraphs 1 through 178 are incorporated by reference as though fully
18 set forth herein.

19 180. The specified Defendants are subject to *respondeat superior* liability
20 for the wrongful acts and omissions of any agent or employee of any of them,
21 undertaken in the course of any commercial conduct for the benefit of Defendants,
22 collectively or individually. Among the specified Defendants, individuals may also
23 be jointly liable for their own acts subject to proof.

24 181. The specified Defendants are/were responsible for and/or perform(ed)
25 the manufacture, marketing, distribution, and/or sale of FasciaBlaster. The Plaintiffs
26 and others similarly situated purchased FasciaBlasters from the Defendants in
27 reliance on *inter alia* the specified Defendants' holding themselves and one another
28

1 out as having special scientific knowledge or skill regarding the realm of health and
2 aesthetic benefits which, Defendants convinced Plaintiffs, FasciaBlaster purportedly
3 confers.

4 182. As described herein *supra*, and in other ways subject to proof,
5 FasciaBlaster was not and is not fit for even the most ordinary among the many
6 wide-ranging purposes which Defendants did or do promote, particularly given the
7 techniques they instruct. For example, on information and belief, FasciaBlaster's
8 high BPA content renders it below the standard quality expected of a purported
9 medical implement safe for use in a hot bathtub, shower or sauna, yet Defendants
10 did and do instruct precisely such use.

11 183. As described herein *supra*, and in other ways subject to proof, some
12 Plaintiffs and many others similarly situated have taken reasonable steps, within a
13 reasonable time, to notify the Defendants that FasciaBlaster did or does not have the
14 expected quality.

15 184. As described herein *supra*, and in other ways subject to proof,
16 FasciaBlaster's failure to have the expected quality was, is, or will be a substantial
17 factor in causing harm to Plaintiffs and others similarly situated.

18 185. In light of the foregoing, the specified Defendants are liable to
19 Plaintiffs and others similarly situated for breach of implied warranties of
20 merchantability.

21 **ELEVENTH CAUSE OF ACTION**
22 **(DECEIT/INTENTIONAL FRAUD)**

23 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

24 186. Paragraphs 1 through 185 are incorporated by reference as though fully
25 set forth herein.

26 187. The specified Defendants are subject to *respondeat superior* liability
27 for the wrongful acts and omissions of any agent or employee of any of them,
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1 undertaken in the course of any conduct for the commercial benefit of Defendants,
2 collectively or individually. Among the specified Defendants, individuals may also
3 be jointly liable for their own acts subject to proof.

4 188. The specified Defendants are or were responsible for and/or
5 perform(ed) the manufacture, testing, marketing, distribution, and/or sale of
6 FasciaBlaster.

7 189. As described herein *supra*, and in other ways subject to proof, the
8 specified Defendants did or do publicize, and/or solicit others to publicize, false
9 statements pertaining to, *inter alia*: FasciaBlaster's efficacy in achieving certain
10 aesthetic and health results; that FasciaBlaster is 100% safe to use; that
11 FasciaBlaster does not cause weight gain; academic and medical qualifications of
12 certain Defendants and agents/employees thereof; scientific legitimacy of
13 Defendants' putative clinical trial; etc.

14 190. As described herein *supra*, and in other ways subject to proof, the
15 specified Defendants

- 16 (a) knew that their representations were false when they made them,
17 (b) suppressed fact(s) which they had/have obligation(s) to disclose,
18 including *inter alia* by
19 (c) publicizing other information likely to mislead for want of
20 communication of the facts suppressed,
21 (d) made promises regarding the performance of FasciaBlaster and
22 accessories without any reasonable knowledge that FasciaBlaster or
23 accessories would perform every promise, and/or
24 (e) made false representations recklessly and without regard for their
25 truth.

26 For the purposes of this and other causes of action, full knowledge of facts to which
27 Defendants were indifferent, if any, ought properly to be imputed to them. "False
28

1 representations made recklessly and without regard for their truth in order to induce
2 action by another are the equivalent of misrepresentations knowingly and
3 intentionally uttered.” *Engalla v. Permanente Medical Group, Inc.*, 15 Cal.4th 951,
4 974 (1997), quoting *Yellow Creek Logging Corp. v. Dare*, 216 Cal.App.2d 50, 55
5 (1963).

6 191. As described herein *supra*, and in other ways subject to proof, the
7 specified Defendants intended that Plaintiffs and others similarly situated would rely
8 on their false representations e.g. in deciding to purchase and use FasciaBlaster.

9 192. As described herein *supra*, and in other ways subject to proof, the
10 Plaintiffs and others similarly situated reasonably relied on the specified
11 Defendants’ false representations, e.g. in purchasing FasciaBlaster and in using it as
12 directed by the Defendants.

13 193. As described herein *supra*, and in other ways subject to proof, the
14 Plaintiffs and others similarly situated were harmed by their use of FasciaBlaster,
15 including endocrine, cardiovascular, digestive, neurological, psychological,
16 aesthetic, and other physical harms.

17 194. As described herein *supra*, and in other ways subject to proof, the
18 Plaintiffs and others similarly situated were also harmed by their use of
19 FasciaBlaster inasmuch as many if not all of them did or do suffer serious emotional
20 distress, e.g. one or more of suffering, anguish, fright, horror, nervousness, anxiety,
21 grief, worry, shock, humiliation, and shame.

22 195. The reliance by Plaintiffs and others similarly situated on the false
23 representations by the specified Defendants was a substantial factor in causing the
24 specified and further harms suffered by Plaintiffs and others similarly situated. As
25 such, the specified Defendants’ intentional and/or reckless misrepresentations of fact
26 constitute fraudulent deceit pursuant to *inter alia* Cal. Civ. Code §§ 1572, 1709, and
27 1710, and at common law, giving rise to the specified Defendants’ liability to the
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1 Plaintiffs and others similarly situated for special and general damages, including
2 *inter alia* for intentional infliction of emotional distress, as well as punitive
3 damages, which Plaintiffs hereby request pursuant to *inter alia* Cal. Civ. Code §
4 3294.

5
6 **TWELFTH CAUSE OF ACTION**
(DEFAMATION)

7 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

8 196. Paragraphs 1 through 195 are incorporated by reference as though fully
9 set forth herein.

10 197. The specified Defendants are subject to *respondeat superior* liability
11 for the wrongful acts and omissions of any agent or employee of any of them,
12 undertaken in the course of any conduct for the commercial benefit of Defendants,
13 collectively or individually. Among the specified Defendants, individuals may also
14 be jointly liable for their own acts subject to proof.

15 198. The specified Defendants are/were responsible for and/or perform(ed)
16 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

17 199. As described herein *supra*, and in other ways subject to proof, the
18 specified Defendants did and do publicize, and/or solicit, encourage, and permit
19 others to publicize, false and injurious statements about some of the Plaintiffs and
20 others similarly situated, including within public (social) media forums, e.g.
21 Facebook discussion groups over which the specified Defendants unilaterally
22 exercise editorial control. Within such media forums, the specified Defendants have
23 the power to, and do, delete, overwhelm, or otherwise counter any statement they do
24 not like—on numerous occasions, some or all of the specified Defendants have
25 deleted public comments by Plaintiffs and others e.g. in social media forums
26 controlled by Defendants—yet the Defendants did and do also contemporaneously
27 cause or permit false and disparaging comments pertaining to some Plaintiffs and
28

1 others similarly situated to remain on public display, to be viewed by hundreds of
2 thousands of people or more. Defendants further did and do falsely disparage
3 Plaintiffs and others similarly situated between one another or with third parties in
4 more private conversations, online messaging (e.g. Facebook Messenger), and other
5 media. This conduct is nevertheless defamatory as well.

6 200. False and disparaging statements which the specified Defendants did
7 and do publicize and/or solicit, encourage, or permit others to publicize, include
8 *inter alia*:

9 (a) "A GoFundMe account was set up by Julie Day Lefebvre under
10 the pretenses of raising money to 'help anyone who has been Slapped
11 by Ashley Black' and to take Ashley Black to court in a civil suit. ...
12 This is fraud, and we encourage you not to associate with this crime"

13 (b) "[W]hat credible journalist would write a story based on some bs
14 some woman who steals money from gullible women and then uses it
15 for her own advantage. Julie Day Lefebvre....are you sleeping with this
16 man [the journalist]??? ... isn't it odd that she avoids the fact that she's
17 a con artist?"

18 (c) "Julie has multiple GO FUND ME accounts to raise money for
19 Ashley Black's ex husband ... The only problem, the money goes to
20 Julie."

21 (d) "[Plaintiffs] Michelle [Lanum] and Tilly [Dorenkamp] were
22 100% happy at the end of the study ... I don't know why people join
23 hate groups but Michelle and Tilly are blocked because they decided to
24 lie and slander[.]"

25 (e) "Both parties [Lanum and Dorenkamp] had an NDA, so when
26 we saw them posting lies but we were unable to respond..."

27 On information and belief, numerous Class members possess evidence of further
28

1 defamatory statements by the specified Defendants; Plaintiffs expect that their
2 initiating the instant action will encourage more cooperation from other victims who
3 may be too nervous to be publicly identified until this litigation is formally
4 underway. Plaintiffs may seek leave of Court to amend this Complaint as and when
5 further defamatory conduct by the specified Defendants comes to light.

6 201. None of the Plaintiffs or others subject to the specified Defendants'
7 conduct at issue in this cause of action is a public figure.

8 202. Any e.g. Facebook user who was following the activity of Defendants
9 and their more vocal critics, including some of the Plaintiffs herein, upon reading
10 the disparaging comments by Defendants would reasonably understand whom they
11 referred to.

12 203. Any e.g. Facebook user who was following the activity of Defendants
13 and their more vocal critics, including some of the Plaintiffs herein, upon reading
14 the disparaging comments by Defendants would reasonably understand the
15 statements to convey that the disparaged parties are e.g. a collection of mentally
16 deranged liars and criminals.

17 204. The specified Defendants knew of the falsity of the disparaging
18 statements, or failed to use reasonable care to determine the truth or falsity of the
19 statements. Notably, on information and belief, every time the specified Defendants
20 did and do first disparage any given individual, it is in retaliation for a true statement
21 or question from that individual. As such, the specified Defendants know or have
22 reason to know that, at the very least, their first retaliatory libel directed at any given
23 target is false.

24 205. The above-specified and other false and disparaging statements by the
25 specified Defendants, pertaining to certain Plaintiffs and others similarly situated,
26 were substantial factors in causing harms to those Plaintiffs and others similarly
27 situated. For example, Plaintiff Lefebvre and others similarly situated have been
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1 harmed in their personal and professional reputations by the false and disparaging
2 statements by the specified Defendants. Lefebvre received false negative feedback
3 on her personal business's Yelp.com customer review page, from people who had
4 not been her customers, whom the specified Defendants had incited to disparage
5 Lefebvre.

6 206 The Plaintiffs and others similarly situated who have been defamed by
7 the specified Defendants have suffered emotional distress, including *inter alia* fear,
8 anxiety, anger, mortification, depression, shame, and hurt feelings, as a direct and
9 proximate result of said defamation. The Plaintiffs who have been disparaged were
10 driven in part thereby to retain the Law Offices of Perrin F. Disner to prosecute this
11 claim, and to suffer all the burdens that accrue from the prosecution of this case,
12 including *inter alia* requiring them to put private personal information in the public
13 record because this is the only way to adequately defend themselves and their
14 reputations against the specified Defendants' harmful lies about them, shouted from
15 Defendants' bully pulpit and, often, echoed by an obedient chorus of acolytes, many
16 of whom are paid or fake.

17 207. In light of the foregoing, the specified Defendants' defamations are
18 direct and proximate causes of harms suffered by certain Plaintiffs and others
19 similarly situated, to whom specified Defendants are therefore liable for any general
20 and special damages attributable thereto. The injunctive relief requested at Para.
21 106(a-1), *supra* is also warranted, and hereby requested.

22 208. Moreover, the Plaintiffs will demonstrate by clear and convincing
23 evidence that the specified Defendants undertook the defamatory conduct
24 maliciously and with knowledge of their statements' falsity or reasonable grounds to
25 doubt their veracity, justifying an award of punitive damages to Plaintiffs and others
26 similarly situated.

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1 **THIRTEENTH CAUSE OF ACTION**
2 **(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**
3 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

4 209. Paragraphs 1 through 208 are incorporated by reference as though fully
5 set forth herein.

6 210. The specified Defendants are subject to *respondeat superior* liability
7 for the wrongful acts and omissions of any agent or employee of any of them,
8 undertaken in the course of any conduct for the commercial benefit of Defendants,
9 collectively or individually. Among the specified Defendants, individuals may also
10 be jointly liable for their own acts subject to proof.

11 211. The specified Defendants are/were responsible for and/or perform(ed)
12 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

13 212. As described herein *supra*, and in other ways subject to proof, in spite
14 of legal and moral obligations to the contrary, the specified Defendants did and do
15 engage in extreme and outrageous conduct, including, *inter alia*:

- 16 (a) marketing FasciaBlaster with false promises of miraculous
17 benefits, knowing or recklessly disregarding the fact that such promises
18 are not based on any sound scientific evidence;
19 (b) conducting a putative clinical trial without IRB oversight or the
20 supervision of a medical doctor(s), knowing or recklessly disregarding
21 the danger such failures posed to the trusting participants;
22 (c) asserting that their putative clinical trial was scientifically
23 undertaken and definitively vindicated their promises, knowing or
24 recklessly disregarding the falsity of those assertions;
25 (d) failing to undertake a single meaningful investigation—at least
26 as of July 18, 2017 if not more recently—after receiving numerous
27 reports of a wide variety of serious injuries from FasciaBlaster use,
28

1 knowing or recklessly disregarding serious dangers to public health that
2 investigation would reveal;

3 (e) failing to remove the product from market or to meaningfully
4 change instructions for its use—at least as of May 22, 2017 if not more
5 recently—knowing or recklessly disregarding the many undisclosed
6 dangerous side effects which many users were reporting since 2016 if
7 not earlier;

8 (f) deleting feedback from, blocking social media participation by,
9 and denigrating honest people who had had bad experiences with
10 FasciaBlaster, knowing or recklessly disregarding the fact that such
11 feedback might prevent serious harm to thousands of other people;

12 (g) publicly using the likenesses and protected private medical
13 information of private individuals—including to ridicule and attempt to
14 discredit the individual—for commercial purposes, knowing or
15 recklessly disregarding the individuals' failure to authorize such use;

16 (h) publicizing, and soliciting, encouraging, and permitting others to
17 publicize, false and injurious statements about private individuals who
18 have suffered physically and emotionally scarring injuries, knowing or
19 recklessly disregarding the additional injurious effect of such conduct.

20 213. The specified Defendants undertook the foregoing and other extreme
21 and outrageous acts and omissions intending to cause emotional distress to some of
22 the Plaintiffs, and others similarly situated, or with reckless disregard for the
23 likelihood that all Plaintiffs, and others similarly situated, would suffer emotional
24 distress as a result of the Defendants' acts or omissions, many of which were
25 malicious (e.g. retaliatory defamation) or oppressive (e.g. preying on a woman's
26 insecurity about her legs to sell her an expensive device and accessories which,
27 ample customer feedback indicated, are as likely as not to significantly worsen her
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1 appearance and mental state, thus making her more susceptible to further marketing
2 claims and accessory sales in her desperation for the promised “better” after the
3 “worse”¹⁸).

4 214. The Plaintiffs, and others similarly situated, did and do suffer severe
5 emotional distress as a result of their experiences with FasciaBlaster.

6 215. The extreme and outrageous acts and omissions by the specified
7 Defendants—some of which were malicious or oppressive rather than merely willful
8 or reckless—were substantial factors in causing severe emotional distress to each
9 Plaintiff and others similarly situated, to whom the specified Defendants are
10 therefore liable for general, special, and exemplary damages.

11 **FOURTEENTH CAUSE OF ACTION**

12 **(UNFAIR BUSINESS PRACTICES – Cal. Bus. & Prof. Code § 17200 *et seq.*)**

13 **Against Defendants Black, ADBIH, ADBI, and applicable DOES**

14 216. Paragraphs 1 through 215 are incorporated by reference as though fully
15 set forth herein.

16 217. The specified Defendants are subject to *respondeat superior* liability
17 for the wrongful acts and omissions of any agent or employee of any of them,
18 undertaken in the course of any conduct for the commercial benefit of Defendants,
19 collectively or individually. Among the specified Defendants, individuals may also
20 be jointly liable for their own acts subject to proof.

21 218. The specified Defendants are/were responsible for and/or perform(ed)
22 the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

23 219. California’s Unfair Competition Law, Business and Professions Code
24

25 ¹⁸ “Worse before better!” is a common marketing refrain of Defendant
26 Black’s. See Paras. 37, 38, 64, 84(h), *supra*. The plain effect of such a slogan is to
27 incite injured users to continue injuring themselves, and to buy more products and
28 accessories if necessary, for promises of e.g. smooth thighs just over the horizon.

1 § 17200, defines “unfair competition” to include “any unlawful, unfair or fraudulent
2 business act or practice[.]” Cal. Bus. & Prof. Code § 17203 allows a person who has
3 lost money or property as a result of unfair competition to bring an action for
4 restitution of money or property acquired from him or her by means of unfair
5 competition.

6 220. As described herein *supra*, and in other ways subject to proof, the
7 conduct that Plaintiffs herein allege Defendants, and each of them, have undertaken,
8 are still undertaking, and/or will continue to undertake absent e.g. injunctive relief,
9 was and is unfair, unlawful, and/or fraudulent, many of which acts and omissions
10 did and do constitute unfair, deceptive, untrue, or misleading advertising.

11 221. As a result of the specified Defendants’ above-alleged unlawful
12 business practices and deceptive advertising, Plaintiffs have suffered in jury in fact
13 and lost moneys and property.

14 222. Pursuant to Cal. Bus. & Prof. Code §§ 17200 and 17203, Plaintiffs seek
15 an order of restitution for all moneys and property that Defendants have acquired
16 from Plaintiffs by means of unfair competition as set forth above in amounts subject
17 to proof. As part of said relief,

18 223. Plaintiffs further request that the Court enjoin Defendants to
19 immediately undertake all of the actions sought at Para. 106(a-l), *supra*.

20 224. Pursuant to Cal. Bus. & Prof. Code § 17206 Plaintiffs seek civil
21 penalties for unfair competition perpetrated against senior citizens and disabled
22 persons.

23 225. Pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.* Plaintiffs seek an
24 award of attorney’s fees and costs of suit incurred herein.

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FIFTEENTH CAUSE OF ACTION

(FALSE ADVERTISING – Cal. Bus. & Prof. Code § 17500 *et seq.*)

Against Defendants Black, ADBIH, ADBI, and applicable DOES

226. Paragraphs 1 through 225 are incorporated by reference as though fully set forth herein.

227. The specified Defendants are subject to *respondeat superior* liability for the wrongful acts and omissions of any agent or employee of any of them, undertaken in the course of any conduct for the commercial benefit of Defendants, collectively or individually. Among the specified Defendants, individuals may also be jointly liable for their own acts subject to proof.

228. The specified Defendants are/were responsible for and/or perform(ed) the manufacture, testing, marketing, distribution, and/or sale of FasciaBlaster.

229. Cal. Bus. & Prof. Code § 17500 states:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated

therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

230. As described herein *supra*, and in other ways subject to proof, Defendants did and do disseminate, or cause to be disseminated, a wide variety of untrue or misleading statements concerning FasciaBlaster and accessories.

231. As described herein *supra*, and in other ways subject to proof, Defendants knew, or by the exercise of reasonable care would have known, that their many of their promotional statements concerning FasciaBlaster were untrue or misleading.

232. Cal. Bus. & Prof. Code § 17508(a) states:

It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

233. As described herein *supra*, and in other ways subject to proof, Defendants did and do advertise to California consumers with false or misleading claims purporting to be based on fact and, especially, clinical evidence. Defendants also falsely or misleadingly compare FasciaBlaster's effectiveness to that of e.g. Cool Sculpting and liposuction, claiming that FasciaBlaster is the superior approach to getting rid of cellulite, an utter falsehood.

234. As described herein *supra*, and in other ways subject to proof, Plaintiffs have been, are, and absent adequate relief will continue to suffer an array of harms from FasciaBlaster use. Defendants' untrue and misleading advertising was and is a direct and proximate cause of some of the harms suffered by Plaintiffs, to whom the specified Defendants are therefore liable for civil penalties in the amount of \$2,500 for every instance of an untrue or misleading statement made by the specified

1 Defendants in the course of promoting FasciaBlaster at any point prior to the
2 injuries suffered by Plaintiffs as a result thereof.

3 235. In addition to civil penalties, the foregoing acts and omissions by
4 Defendants are misdemeanors. Pursuant to Cal. Bus. & Prof. Code § 17500, each
5 untrue or misleading statement Defendants did or do make in promoting
6 FasciaBlaster is punishable by imprisonment in Los Angeles County Jail for up to
7 six months.

8 **PRAYER**

9 WHEREFORE, Plaintiffs pray for relief as follows:

- 10 1. For general damages, according to proof;
11 2. For special damages, according to proof;
12 3. For punitive damages in amounts which the Court deems protective of public
13 policy's interest in deterring the acts and omissions giving rise to this case;
14 4. For statutory damages;
15 5. For restitution, subject to proof;
16 6. For speculative damages accounting for future medical and aesthetic
17 remedies, subject to proof;
18 7. For damages for lost income, subject to proof;
19 8. For pre-judgment interest on all damages;
20 9. That appropriate injunctive relief be entered, including *inter alia* requiring
21 Defendants to immediately undertake all of the actions specified herein at Para.
22 106(a-1), *supra*.
23 10. For reasonable attorney fees and costs of suit, to be determined according to
24 pertinent case law authority; and
25 11. For incentive awards to the named Plaintiffs for their effort and courage.

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1 12. Such other and further relief as the Court may deem just and proper.
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3 DATE: October 19, 2017

LAW OFFICES OF PERRIN F. DISNER

4
5
6 By: 

Perrin F. Disner

7 Attorneys for Plaintiffs

8 Emily Elson, Stacy Haavisto, Loretta Oakes,
9 Michelle Lanum, Julia Lefebvre, Sue Grlicky,
10 Tilly Dorenkamp, Dina Salas, Arlene
11 Rodriguez, and Jerry Gaines, and all others
12 similarly situated
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TRIAL BY JURY

Please take notice that a trial by jury is hereby requested.

DATE: October 19, 2017

LAW OFFICES OF PERRIN F. DISNER

By: 

Perrin F. Disner

Attorneys for Plaintiffs

Emily Elson, Stacy Haavisto, Loretta Oakes,
Michelle Lanum, Julia Lefebvre, Sue Grlicky,
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